IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 303 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMBALAL OKARLAL PATEL

Versus

FILOMAN PATHUBHAI PATEL

Appearance:

1. Second Appeal No. 303 of 1986

MR MD PANDYA for Petitioner No. 1-2,4,6-21

MR K.H.KAJI with MR MAKWAN for M/S TRIVEDI & GUPTA for Petitioner No. 3,5

MR JASHVANT M PATEL for Respondent No. 1-3

MRS KETTY A MEHTA for Respondent No. 4-5,7

RULE NOT RECD BACK for Respondent No. 6

MR AD OZA, Ld. GOVERNMENT PLEADER for Respondent No. 8

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 21/03/2003

C.A.V. JUDGEMENT

1. Ambalal Okarlal Patel and others, appellants original plaintiffs have filed this second appeal under

section 100 of the Code of Civil Procedure, against the judgment and decree dated 11th August, 1986, passed by the learned Extra Assistant Judge, Bharuch, in Regular Civil Appeal No.72 of 1984. The learned Judge by his impugned judgment was pleased to allow the appeal and quashed and set aside the judgment dated 31st March, 1984, passed by the learned Civil Judge (S.D.), Bharuch in Regular Civil Suit No.72 of 1972.

BACKGROUND OF THE MATTER:

2. In the year 1898 A.D. some American Missionaries established a religious institution (Church) at Valsad for propagation of protestant faith of Christian religion and to establish and manage the churches for the people professing that faith. Gradually their activities were extended and similar institutions came into being at Ankleshwar in Bharuch District and at Jalalpore Town in Navsari Taluka of Valsad District. In course of time, these activities were further extended to various other places in the then Bombay State. For administrative facilities and convenience, such local institutions came to be grouped into two categories viz. one (1) comprising of such institutions situated in the Maharashtra Area of the then State of Bombay and another (2) of institutions situated in the Gujarat State area of that State. These institutions were respectively known as the second District Church of Brethren and the First District Church of Brethren (latter is hereinafter referred to as "The Brethren Church").

2.1 The object of the Brethren Church was to propagate the work of the Church of the Brethren in Western India in order to reveal Christ by means of evengelistic, educational, medical, literary, industrial schools, social and charitable activities leading to the establishment of the kingdom of God.

Present Controversy:

2.2 The case in brief which is relevant for the appeal of the plaintiffs - appellants No.1 to 4 herein are that, in the year 1970, six denominations of Protestant Christian faith in India decided to merge themselves to form a united Church of North India (`CNI' for short) for common and better management. One of the uniting denominations functioning in Gujarat was the First District Church of Brethren (hereinafter referred to as `the Brethren Church'). The said Brethren Church was registered in the year 1944 as a Society under the

Societies Registration Act, 1860 (`SR Act' for short).

2.2(A) Prior to its registration under the BPT Act, the Brethren Church had its Memorandum of Association and Rules and Regulations framed under the SR Act which provided, inter alia, by Rule 4 of the General Rules, that upon winding up or dissolution of the Trust its properties should be transferred to some institution having objects similar to the society, to be determined by the 3/5th vote in the last business session of the society before the time of dissolution. It was stated that in view of section 13 of the SR Act which provided that the society may be dissolved by majority of 3/5th of the members of the society at a general meeting convened for the purpose.

2.3 After coming into force of the Bombay Public Trusts Act, 1950 (`BPT Act' for short) in the then State of Bombay, the Brethren Church was registered as a Public Trust at No.E/827 (Bom.) initially with the office of the Deputy Charity Commissioner of Greater Bombay, by considering its Memorandum of Association as its Trust Deed. Under the definition of Public Trust under Sec.2(13) of the BPT Act, a society has also been included in the said definition.

2.4 After the formation of the separate State of Gujarat, the Brethren Church was registered on 22.6.60 under the BPT Act at No.EG/643 (Bharuch) with the office of the Assistant Charity Commissioner, Baroda Region, Bharuch.

2.5 In the Schedule-I of the register of the Public Trust maintained by the Charity Commissioner under Sr.No.EG/643 under the head `Particular of document creating the Trust' in col.6 following is mentioned "Memorandum of Association".

2.6 It has been stated by the plaintiffs that in the plaint and memo of appeal and at the time of hearing of this appeal there was a move by various uniting denominations to merge into CNI including those of Maharashtra and Gujarat came to be crystalised in various meetings held by various congregations and churches. So far as the Brethren Church was concerned, at a meeting of its Governing Body held on 17.2.70, it was resolved by the general meeting to dissolve itself and merge with the CNI. The said resolution was passed at the meeting consisting of 78 members wherein 70 members voted in favour of the merger and 8 members voted against. The then office bearers of the Brethren Church, viz.

President, Secretary, Trustees were also present at the said meeting. The resolution was passed as aforesaid and all six uniting denominations merged to form CNI at the inaugural function at Nagpur on 29.11.1970 by submitting the necessary resolutions of merger passed in their authentic governing bodies and signed by their authorised office bearers, and accepted the Plan of Church Union in India and Pakistan, 4th revised edition, 1965 (4th Plan for short) along with the constitution of CNI mentioned therein at part-I and became constituent of CNI from the day of inauguration i.e. 29.11.1970 onwards. All their members became members of the united church i.e. CNI which includes defendant No.1 to 4 and their associated of Special Civil Suit No.72/1979. Under the arrangement mentioned in the 4th Plan interim working arrangement was carried out within all the churches which merged into the CNI. This interim arrangement continued upto 7.10.1977.

2.7 A splinter group being less than 5% of the members of the former Brethren Church held a meeting against the Constitution of CNI on 26.11.78 and purpotedly decided to sever their connections with the CNI with effect from 1.12.78 and to function thereafter as the Brethren Church, according to the constitution of the former Brethren Church. Thereafter the said splinter group created disputes and differences with the representative body of the CNI, viz. Executive Committee of the Gujarat Diocese and stated functioning in the name of the so-called Brethren Church, and started collecting funds, donations etc. in the said name.

2.8 Being aggrieved and dissatisfied with the said action, the appellants No.1 to 4 original plaintiffs filed a suit being Special Civil Suit No.72/79 before the learned Civil Judge (S.D.), Bharuch, on 25.7.79 for certain reliefs after narrating in extenso their aforesaid events and the disputes, differences and conflicts between the splinter group and the CNI. It claimed the following reliefs:

(a) It may please be declared that the former First District Church of Brethren has ceased to exist.

(b) It may please be declared that the Church of North India is the legal continuation and successor of the First District Church of Brethren together with the right, title, claim, interest in or over its properties and the constitution, decisions and resolution of the Church of North India, its Synod and Gujarat

Diocesan Council are binding on all the Pastorates in Gujarat which were functioning as local churches or congregations under the First District Church of Brethren.

2.9 Subsequently CNI Churches, the appellants No.5 to 21 herein applied to be joined as parties of the suit and were impleaded as defendants No.5 to 21. The appellants defendants had filed a written statement supporting the appellant plaintiffs case and prayers as set out in the plaint. Respondent No.4 to 7 also applied to be joined as parties and they were joined as defendants No.22 to 25. They opposed the prayers made by the appellants plaintiffs in the suit.

2.10 Shri Maganlal Balsari - the defendant No.4 filed his written statement at Exh.23 and contested the suit. He admitted the facts upto the publication of the 4th plan of union in 1965. However, he contended that there was no question of dissolution and that the recommendation was for formation of Union of all the Churches and Church of Northern India to represent the union. According to him, the local churches had to give their opinion on the proposal for union on or before 30.6.1988 and by that time only 13 congregations had given their opinions out of which 11 accepted the proposal for union. Remaining 8 congregations gave their opinion in favour of the union after 30.6.1968, which according to the defendant No.4 could not be accepted. It was therefore contended that 2/3 of the 21 congregations had not expressed their opinion on or before 30.6.68 and hence there was no valid acceptance of the proposal to join union. The defendant contended that there was no dissolution of Brethren Church. He further contended that the appellant had no right to file the suit, that the resolutions of 1968 and 1970 were illegal, invalid and void. That the defendants had a right to part company from CNI and had a right to revise the Brethren Church. That the CNI was not the legal continuation and successor of the first district church of Brethren. That the reliefs claimed by the plaintiffs were against public policy and were hit by Articles 25-26 of the Constitution of India. That the court had no jurisdiction to entertain the suit as it does not relate to a civil dispute. That the suit is bad for non-joinder of parties. That the suit is not maintainable as the appellant had not obtained necessary permission from the Charity Commissioner under Section 80 of the Bombay Public Trust Act.

2.11 The parties led evidence and ultimately the trial

court before proceeding to determine the questions involved in the matter was pleased to issue a notice to the Charity Commissioner under Sec.56B of the Bombay Public Trust Act, as it felt that the suit involved questions against public charitable purpose.

2.11(A) The Charity Commissioner filed a written statement at Exh.132. In the said written statement it was specifically contended that in view of the BPT Act, the question whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, is to be decided exclusively by the Deputy or Assistant Charity Commissioner appointed under the Act. After due inquiry as provided under the Act, the Assistant Charity Commissioner, Bharuch, has registered "the First District Church of Brethren" as a public trust at No.E-643 (Bharuch) under the Bombay Public Trusts Act, 1950. The decision of the Assistant Charity Commissioner, Bharuch unless set-aside as provided under the Act is final and conclusive. It was further submitted that the jurisdiction of the Court is also barred under Section 80 of the Act and therefore the plaintiffs are not entitled to the reliefs as prayed for by them and the suit deserves to be dismissed. The said written statement was filed on 10th April, 1981.

2.11(B) On pleadings of the parties, the learned trial Judge framed issues at Exh.117. After recording the evidence of the parties and after hearing the learned advocates for the parties the learned trial Judge by his judgment and decree dated 31st March, 1984, decreed the suit of the plaintiffs. The learned trial Judge has held as under:

(a) The plaintiffs had a right to file the suit.

(b) All the six Uniting Churches were dissolved and they had united and had become one church viz. The Church of North India.

(c) The Brethren Church was also dissolved and ceased to exist as a separate entity.

(d) The defendant Nos.1 to 4 failed to prove the resolutions dated 19.2.68 and 17.2.70 were illegal or invalid.

(e) It was not proved that these was no valid consent given by 21 congregations.

(f) The defendants No.1 to 4 failed to prove that

they could part company from C.N.I. and that they had a right to secede.

(g) That the defendants No.1 to 4 failed to prove that they had a right to revive the Brethren Church.

(h) The C.N.I. is the legal continuation and successor of the first district church of Brethren.

(i) That the reliefs claimed by the plaintiffs were not against public policy.

(j) The Civil Court had jurisdiction to entertain the suit.

(k) The suit was not bad for non-joinder of parties.

(l) The suit is maintainable without permission of Charity Commissioner u/s 80 of the BPT Act.

(m) The suit was not barred u/s.80 of the BPT Act.

(n) The plaintiffs were entitled to the reliefs claimed.

2.12 Being aggrieved and dissatisfied with the said judgment and decree of the trial court, the original defendants and present respondents had filed Regular Civil Appeal No.72/84 in the District Court at Bharuch.

2.13 Thereafter, the learned Assistant Judge, Bharuch decided the said appeal against the present appellants by his judgment and decree dated 11.8.86. The learned Judge has held as under:

(a) The Brethren Church was not dissolved and had not ceased to exist.

(b) The Civil Court had no jurisdiction to entertain the suit.

(c) The suit was barred u/s.80 of the BPT Act.

(d) The plaintiffs had no right to file the suit.

(e) The defendants failed to prove that they could part company of C.N.I. and that they had a right to secedes.

(f) The defendants failed to prove that they had a

right to revive the Brethren Church.

(g) The C.N.I. was not proved to be a legal continuation and successor of the first district church of Brethren.

(h) The reliefs claimed in the suit were not against public policy.

2.14 Being aggrieved and dissatisfied with the said judgment the present appellants preferred an appeal under Section 100 of the Code of Civil Procedure being Second Appeal No.303/86 before this Court on December 1986 with four substantial questions of law which reads as under:

(1) Whether a society registered under the SR Act would stand dissolved on complying with the formality mentioned in Section 13 of the SR Act? If yes, whether the facts that the society is a Public Trust under the BPT Act would make any difference?

(2) Whether the civil court has jurisdiction to entertain and try the suit for declaration the a society registered under the SR Act has been dissolved and is no longer in existence? If yes, whether the facts that the society is a Public Trust by virtue of the inclusive definition of Public Trust in the BPT Act would make any difference?

(3) Whether there is any real or apparent conflict between the provisions of the SR Act and the BPT Act in relation to the formalities for dissolution of a society (which is also a Public Trust) and with regard to the forum which can decide the question? If yes, how can that inconsistency be resolved?

(4) Whether the plaintiff has no right to sue?

2.15 However, when the appeal was admitted on 19th January, 1987, this Court framed following substantial question of law.

(1) Whether after complying with the formalities as mentioned in Sec.13 of the S.R.Act, whether provisions of the Bombay Public

Trust Act will be required to be complied with to decide as to whether the society which is dissolved exists as a Trust under the Bombay Public Trust Act?

CONTENTION OF MR.K.H.KAZI, L.A. FOR THE APPELLANT

3. Mr.K.H.Kaji, learned Senior Counsel with Mr.Makwan, learned advocate has invited my attention to the provisions of the Societies Registration Act, 1860 (`S.R. Act' for short) particularly sec.5 and 13 of the Act which reads as under:

"Sec.5 Property of society how vested :- The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title."

"Sec.13 Provision for dissolution of societies and adjustment of their affairs :- Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities according to the rules of the said society applicable thereto, if any, and if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situate, and the Court shall make such order in the matter as it shall deem requisite:

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person or by proxy, at a general meeting convened for the purpose."

3(A) It was submitted that Section 13 of the SR Act which provided that the society may be dissolved by

majority of 3/5th of the members of the society at a general meeting convened for the purpose.

3.1 He has also invited my attention to Memorandum of Association of the First District of the Church of the Brethren in India particularly clause 4 which reads as under:

"Cl.4 If upon winding up or the dissolution of the District Meeting of the First District of the Church of the Brethren in India there remain, after the satisfaction of all its debts and labilities, any property whatsoever, the same shall not be paid to any individual church or individual of the District, but shall be transferred to some board, institution or institutions, having objects similar to the Society, to be determined by a 3/5 vote in the last business session of the Society before the time of dissolution, and in default of that, by the High Court of Juricature of Bombay."

3.2 He has also invited my attention to Sec.26 of the Bombay Public Trusts Act, 1950 (`BPT Act' for short) which provides that the Court to forward copy of decision to Charity Commissioner.

3.3 The learned counsel for the appellants has made following submissions:

(1) That the Brethren Church was a society and it was validly dissolved and was merged with the CNI with all its properties etc. by their resolutions dated 17.2.70 passed in total compliance with section 13 of the SR Act and Rule 4 of the General Rules and the Regulations of its Memorandum of Association of the Brethren Church framed under the SR Act. This decision does not fall within the scope of inquiry of the Charity Commissioner under the BPT Act merely because the society is a deemed Public Trust covered by Section 2(13) of the BPT Act.

(2) In case the said dissolution and merger and transfer of the properties to CNI is obstructed to by so called members of the former society now dissolved, the said dispute does not fall within the scope of the Charity Commissioner under any of its provisions and can only be decided by a civil court of competent jurisdiction.

(3) The Charity Commissioner is not competent to decide the question whether the society is dissolved or not in compliance with its Memorandum of Articles and Rules and Regulations. Such question in relation thereto is within the jurisdiction of the civil court.

(4) Once the civil court decides this issue, the Charity Commissioner has to implement the same under sec.26 of the BPT Act by amending and altering its registration in that behalf. The jurisdiction of the Charity Commissioner with regard to the society may pertain to in the realm of administration of the society or its management but not to its existence or dissolution which has to be carried out in terms of the SR Act.

(5) In view of the findings of both the lower courts that factually the resolutions were passed by the former Brethren Church on 17.2.70 to dissolve and merge itself with the CNI, the same has only to be given effect to by the Charity Commissioner under section 26 of the BPT Act. He is not to decide anything nor to hold any inquiry as contemplated by section 19 or 22 of the BPT Act.

(6) The nature of the suit filed in the instance case and the prayers are not for a finding that the Trust is dissolved or is extinguished but only that the society named as the Brethren Church has ceased to exist because of passing of appropriate resolution under sec.13 of the SR Act read with rule 4 of the general rules of the society. Similarly, the declaration that the CNI is a legal continuation and successor of the former Brethren Church is also consequence of the extinction of the Brethren Church.

(7) The primary reliefs in the plaint are permanent injunction preventing the former members of the Brethren Church from acting contrary to the decision of CNI and for a further permanent injunction against the said members from acting in the name of the Brethren Church or from collecting funds etc. The nature of the suit has to be decided by looking at the plaint as a whole and the substance of the various

reliefs claimed as observed by the decision of the High Court of Gujarat. It is, therefore, submitted that the suit does not fall within the scope of Sec.80 of the BPT Act as the prayers claimed are outside the scope of the inquiry and the decision of the Charity Commissioner under the BPT Act and therefore, does not fall within the scope of the BPT Act.

(8) The suit is in substance, a suit for permanent injunction against the persons of splinter group who are obstructing the possession and management of the properties of CNI which after the dissolution of the former Brethren Church and its merger with CNI were part of the properties of CNI. It may be noted that such obstruction was at the instance of few members of the former Brethren Church, but they are in different position. Legally, they are trespassers against whom a suit can be validly filed in civil court as held by this Court in the case reported in 1966 GLR 1011.
(Re.Malek Chitta Rasul vs. Pathan Mohmedkhan Kalukhan).

(9) Both the lower courts have held that the resolutions regarding dissolution and merger have been passed in compliance with the provisions of the SR Act and that it is not open to the respondents to contend that they can part company of CNI, they can secede from CNI or revive the Brethren Church. This concurrent finding is based on the fact that the provisions of the SR Act have been properly complied with for the dissolution and merger of the Brethren Church. After this finding, the two courts have taken a different view on its effect in relation to the BPT Act. The trial court has held that the reliefs claimed under the suit do not fall within the purview of the BPT Act while the lower court is of the view that the suit is not maintainable in view of section 80 of the BPT Act and the Charity Commissioner has exclusive jurisdiction to try whether the Brethren Church exists or ceased to exist by virtue of the fact that the register maintained under the BPT Act still contain the entry relating to the former Brethren Church. That entry according to the lower appellate court can only be amended by appropriate proceedings under Section 22 of the BPT Act.

3.4 In support of the aforesaid contention, learned counsel for the appellant has relied upon the Full Bench judgment of the Bombay High Court in the case of Keki Pestonji Jamadar and another vs. Khodadad Merwan Irani and others reported in AIR 1973 Bombay 130. The Full Bench judgment of the Bombay High Court delivered by Justice Chandrachud (as he was then) and has relied upon paras 15, 16, 20, 22, 24, part of para 26, part of para 27, 28, 32, 33, 35, 36, 39 and 40. In that case the Bombay High Court was concerned with the following question:

"Is the question whether the author of the trust was the lawful owner of the property of which he has created the trust or had otherwise authority to create the particular trust covered by Section 79 read with Section 80 of the Bombay Public Trusts Act, 1950?"

3.4(A) The Court has answered the same question in negative and held that the Civil Court would have jurisdiction to decide the point raised in question no.1 in that case sec.80 cannot operate has to bar to that jurisdiction.

Whether action of Charity Commissioner is repugnant to Societies Registration Act and in view of Article 254 of the Constitution of India?

3.5 Learned counsel for the appellant submitted that as per the submission of the respondents if it is assumed that even if the society is validly dissolved by its members under Section 13 of the SR Act, it would still be required to be investigated in proceedings under the BPT Act. In that case also the provisions of the two Acts in this respect would be inconsistent and in conflict with each other. Under Article 254 of the Constitution of India, the Central Act shall prevail. If it is construed that in case of a society validly dissolved in compliance with Section 13 of the SR Act read with Rule 4 of the General Rules of the society, the society continues to exist under the BPT Act. Then there is a direct conflict between the SR Act and the BPT Act in this regard and the Central Act has to prevail in such a situation. In support of this contention the learned counsel for the appellant has relied on the judgement of the Hon'ble Supreme Court in the case of KAISER-I-HIND PVT. LTD. VS. NATIONAL TEXTILE CORPORATION LTD. reported in AIR 2002 SC 3404 particularly paragraphs Nos. 11, 12 and 13. The Hon'ble Supreme Court while considering Article 254

of the Constitution of India made the following observations:

"Para 11 - It is apparent that language of Clause (1) of Article 254 gives supremacy to the law made by the Parliament, which Parliament is competent to enact. It inter alia provides (subject to the provisions of Clause 2) that -

(a) if any provision of law made by the Legislature of State is repugnant to any provision of a law made by the Parliament, which the Parliament is competent to enact, then the law made by the Parliament whether passed before or after the law made by the Legislature of such State shall prevail and the law made by Legislature of the State shall, to the extent of repugnancy, be void; or

(b) if any provision of a law made by the legislature of State is repugnant to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then the existing law shall prevail and the law made by the legislature of the State shall, to the extent of repugnancy, be void;

Para 12 - For the purpose of the present case, Clause (2) requires interpretation, which on the analysis provides that where a law: -

(a) made by the legislature of a State;
(b) with respect to one of the matters enumerated in the Concurrent List;
(c) contains any provision repugnant to the provisions of an earlier law made by the Parliament or existing law with respect to that matter;
then, the law so made by the legislature of the State shall -
(1) if it has been "reserved for consideration of the President;" and
(2) has received "his assent";
would prevail in that State.

Para 13 - Hence, it can be stated that for the State law to prevail, following requirements must be satisfied

(1) law made by the legislature of a State should be with respect to one of the

matters enumerated in the Concurrent List;

(2) it contains any provision repugnant to the provision of an earlier law made by the Parliament or an existing law with respect of that matter;

(3) the law so made by the Legislature of the State has been reserved for the consideration of the President; and

(4) it has received "his assent".

3.6 After relying on the aforesaid judgement, he submitted that the word "reserved for consideration of the President" would manifest that after careful thinking over and due application of mind regarding the necessity of having State law which is repugnant to the law made by the Parliament the President may grant assent. He submitted that the question of repugnancy was considered by the trial court. He therefore submitted that on the question of the Forum to entertain the question about dissolution of the society which is deemed to be a public trust under the BPT Act there is a clear conflict between the SR Act and BPT Act. Reference to Section 13 of the SR Act shows that it provides procedure for dissolution of the society and the dispute about the subsequent disposal of the funds of the society in absence of agreement is to be referred to the Civil Court. Obviously, when the issue of dissolution itself is disputed under the said Section, it must be held to be referable to the Civil Court.

3.7 He further submitted that there are two separate entities of a society under the SR Act and a public trust under the BPT Act because the society itself becomes a deemed public trust under Section 2(13) by an inclusive definition. In other words, it is a deemed trust. If the society does not exist the trust automatically ceases to exist. If the society is dissolved under the provisions of Section 13 of the SR Act subject to the dispute being resolved by the Civil Court in that respect a public trust automatically ceases to exist. The trust does not and cannot exist once the society is dissolved.

3.8 He further submitted that it is not within the jurisdiction of the Charity Commissioner to adjudicate about the dissolution of the society. It has to be done by the society by following procedure under Section 13 of the SR Act and subsequent adjudication, if any, by a

Civil Court. Once the society stands dissolved, nothing is left for adjudication or decision by the Charity Commissioner and he has to amend the entry in the Register of public trust in compliance with Section 26 of the BPT Act. No further adjudication is contemplated by the Charity Commissioner. Any other view would result in a very anomalous situation in which the society may stand dissolved under SR Act but the public trust continues to exist till the Charity Commissioner adjudicates about existence of the public trust under Section 79. The inclusion of a society in the definition of a public trust is only for the purpose of streamlining and controlling the administration of the society which is of the nature of a public trust. The ousting of jurisdiction of the Civil Court qua a society is not contemplated merely because the society is deemed to be a public trust under the inclusive definition as contained in Section 2(13).

3.9 He further submitted that there is clear repugnancy as to the authority which is to adjudicate about the dissolution of the society whether it is the Civil Court or the Charity Commissioner who will have the jurisdiction. This conflict makes the two laws repugnant. In view of the latest judgement of the Hon'ble Supreme Court in Kaiser Hind Mills case (supra), it is for the State to prove that the assent of the President was an informed asset after his attention was drawn to the repugnancy and reasons were made out to justify conferring jurisdiction on the Charity Commissioner. That being not done, the State law cannot supersede the Central law with regard to the dissolution of the society. These submissions are made independent of each other.

CONTENTION OF MRS. KETTY A. MEHTA ON BEHALF OF THE RESPONDENTS:

4. Mrs.Ketty Mehta, learned advocate for the respondents has invited my attention to the provisions of the Bombay Public Trust Act particularly preamble to the act which provides that an act to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Bombay and whereas it is expedient to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Bombay and therefore the said act has been enacted.

4.1 The learned advocate for the respondents has invited my attention to Sec.2(13) of the Bombay Public Trusts Act, 1950 which reads as under:

"Sec.2(13) "Public trust" means an express or constructive trust for either a public, religious or charitable purpose or both and includes a temple, a math, a wakf, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860."

4.2 It was submitted that by virtue of the provisions of the definition of the public trust in the BPT Act, under Sec.2(13) there is a deeming provision regarding a society registered under the Societies Registration Act and formation either for a religious or charitable purpose becoming a public trust. Therefore, even if it is not registered by the society as a trust under the provisions of the BPT Act, after 1950, Charity Commissioner has exclusive jurisdiction to deal with such society and its properties under the provisions of the BPT Act.

4.3 Learned advocate for the respondents has also invited my attention to Sec.18 of the BPT Act which provides for registration of public trusts. Sec.19 provides for inquiry for registration. Sec. 20 provides for findings of Deputy or Assistant Charity Commissioners. Sec.21 provides entries in register. Sec. 22 provides change in said register. Sec.22(A) provides further inquiry by Deputy or Assistant Charity Commissioner. Sec.23 provides procedure where trust property is situate in several regions or sub-regions.

Sec.79 of the Act reads as under:

"Sec.79 Decision of property as public trust property:

(1) Any question, whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, shall be decided by the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal as provided by this Act.

(2) The decision of the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal, as the case may be, shall, unless set aside by the decision of the court on application or of the High Court in appeal, be final and conclusive."

4.3(A) Sec.80 provides Bar of Jurisdiction which reads as under:

"Sec.80 Bar of jurisdiction:- Save as expressly provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act, or in respect of which the decision or order of such officer or authority has been made final and conclusive."

4.4 After relying upon the aforesaid provisions of the Act, learned senior counsel for opponent submitted that by virtue of the said inclusive definition, a society registered under the Society Registration Act was deemed to be a public trust because of the inclusive definition. Therefore, the Brethren Church became a public trust under the provisions of the Bombay Public Trust Act. The trustees of the Brethren Church registered the said Church as a public trust under the provisions of the Bombay Public Trust Act and registration No.E/827 was given in the year 1950. After the formation of the Gujarat State, it was registered in Gujarat on registration No.E/643 (Bharuch), on 22.6.60. In the year 1970, 21 local churches or congregation were having movable and immovable properties and they were headed by Pator (Priest). The churches which were in existence in India, Pakistan and Burma were brought under the United Church of North India.

4.5 It seems that on behalf of the CNI, an idea of amalgamating all the churches under one CNI was considered in the meeting held on 17th February, 1970, and it is alleged by the plaintiffs that majority members of the Brethren Church voted in favour of the resolution to unite with CNI. It was alleged that most of the churches or congregations under the Gujarat Diocesan Council implemented the Chapter and started functioning according to the constitution of the CNI and elected its own committee. Some members of the Brethren Churches of Jalalpur and Valsad who were resident of Valsad and Navsari, including the Treasurer and Secretary of the

Brethren Church raised a question that they are a public trusts registered under the provisions of the BPT Act and on proper inquiry being made under the BPT Act, they were registered as existing public trust and their properties were also registered as the properties of the Brethren Church. Therefore, they continue as a public trust and they have a right to carry on their activities as public trust.

4.6 After relying upon the provisions of Sections 19, 22, 79 and 80 of the BPT Act, learned advocate submitted that it is clear that the question whether a public trust exists or not and any question pertaining to movable or immovable property of the said trust is within the exclusive jurisdiction of the Deputy Charity Commissioner or Assistant Charity Commissioner in charge of the public trust registration office and that if any change is required to be made regarding (a) whether a trust exists or not and (b) whether the properties of any other trust or not, are squarely covered under the provisions of Sec.19. It was further contended that as the decision regarding the said two questions is within the jurisdiction of Deputy or Assistant Charity Commissioner under Section 79 of the said Act, the jurisdiction of the Civil Court under Sec.80 of the said Act is barred.

4.7 It was further contended that if any suit or against the trust for recovery of possession of the property of the trust or declaration or injunction against the trust is to be filed, it will be covered under Sec.50(i),(ii),(iii) and (iv) of the BPT Act and that consent of the Charity Commissioner for institution of such suit regarding any matter falling under Section 50 is required to be obtained and no suit can be filed without such consent. It was therefore contended that it was an admitted fact that no consent of the Charity Commissioner was obtained and therefore the suit was barred.

4.8 In support of the aforesaid contention, learned advocate for the respondents has relied upon an unreported Division Bench judgment of this Court in First Appeal No.116 of 1966 in the matter of Sulochana K.Desai Vs. Charity Commissioner, Gujarat State (Coram: J.M.Sheth & C.V.Rane, JJ) decided on 27.11.1972. In that case also the trust was earlier registered under the SR Act and subsequently it was registered under BPT Act. Thereafter the Charity Commissioner, Ahmedabad, had prepared a scheme for the above trust on 7.8.1963. One of the trustees namely Sulechna Kanaiyalal Desai had made an application under Sec.72 of the Act to set aside the

order dated 7.8.1963 of the Charity Commissioner. The learned City Civil Judge has dismissed the said application on 24.9.1965. Being aggrieved by the said order the original opponent filed an appeal before this Court. During the appeal proceedings it was revealed that the proceedings to frame a scheme were started suo motu by the Charity Commissioner under section 50A of the Act. The appellant and the opponents Nos.2 to 7 were the trustees under the trust deed executed on 21.8.1920. The provision is made for the governing body known as the Managing Committee or the Vayavsthapak Mandal for the management of the trust. It was contended in the trial court that, the Charity Commissioner had not properly appreciated the scope of Sec.50A of the Act. It was also contended in the trial court that the Charity Commissioner had no jurisdiction to interfere with the constitution of the trust registered under the SR Act.

4.9 Before the Division Bench of this Court following four contentions were raised.

(1) That the Charity Commissioner has no jurisdiction to interfere with the constitution of the trust registered under the Societies Registration Act, 1860;

(2) Under section 50A of the Act, the Charity Commissioner has no power to remove the original trustees who were to be trustees for life according to the original trust deed;

(3) The Charity Commissioner has no power to reduce the term of office of the trustees; and

(4) The provisions in the scheme as to the election of the trustees are not according to law.

4.10 From the record after relying upon the definition of BPT Act the Court has observed as under:

"In view of the above clear provisions of the Act, the argument of the learned advocate for the appellants that, the provisions of the Act are not applicable to the trust in question cannot be accepted."

4.10(A) On page 10 the Division Bench has observed as under:

"Thus, considering from all points of view, we

find that, there is no substance in points Nos.2,3 and 4 urged by the learned advocate for the appellants. No other point is urged before us. We are therefore of the view that, the learned Judge, City Civil Court, was quite justified in dismissing the application."

4.11 Learned advocate for the respondent has also relied upon another Unreported Judgment of this Court in Appeal From Order No.238 of 1982 decided by this Court (Coram: B.K.Mehta, J) on 29th October/ 1st November, 1982) in case of First District Church of Brethren public trust vs. Raj Singh Dixit. In that case also the appellants were the public trust. The learned trial Judge has appointed advocate Shri S.G.Patel as a Court Receiver for managing the suit properties which comprised of agricultural land as well as residential buildings leased out to tenants situate within the revenue limits of village Vali in Jhagadia Taluka of Bharuch District. After considering the provisions of the BPT Act the learned Single Judge pleased to observe on page 5 and 6 as under and ultimately quashed the order of the learned trial Judge appointing court receiver in this behalf.

"I have heard the learned Advocates for the parties and I am of the opinion that the appointment of the Receiver is not warranted on the facts and circumstances of the case particularly because the original plaintiffs Nos. 2 to 6's claim to protect their possession of the properties was in their capacity as trustees. It should be noted that the First District Church of Brethren is a public trust registered under the Bombay Public Trusts Act and the particulars in regard to the said trust are entered in the register kept under section 17 of the said Act in the office of the Charity Commissioner. Those entries would be binding till the necessary change is effected by appropriate proceedings under section 22 of the Bombay Public Trusts Act. The case of the defendants that the First District Church of Brethren is now no more in existence since it is merged in the Church of North India and, therefore, all the properties of the former trust have become the properties of the later trust and that the trustee of the Church of the North India are virtually the trustees of the First District Church of Brethren would be a matter which is exclusively within the competence of the Charity Commissioner and can be decided by him alone. As a matter of fact, the

own showing of the contesting defendants necessary application for effecting the change has been already preferred before the competent authority and, therefore, till that application is determined and decided by the authority, it would not be proper or legal for the Court to appoint any other person or legal for the Court to appoint any other person as Receiver of the trust properties. However, the Charity Commissioner for his decision on the application of the defendants for the change in the entries having regard to the alleged subsequent event which has taken place after the entries were made in the register under section 17 of the Bombay Public Trust Act, 1950 namely the merger of the First District Church of Brethren into Church of North India, would necessarily require some time and, therefore, for the interregnum period some arrangement has to be made as to how the properties are to be managed and the prayer hours be regulated. Having given anxious consideration to the over all aspects of the matter, I am of the opinion that if the following directions are issued in the matter, it will serve the ends of justice.

The order of the learned Civil Judge is set aside."

4.12 After relying upon the aforesaid judgment of B.K.Mehta, J. in case of First District Church Brethren case (supra), learned advocate submitted that it was clearly held that the Brethren Church was a public trust registered under the provisions of the Bombay Public Trust Act and that the specific entries under Section 17 of the said Act were made by the Charity Commissioner pertaining to the said trust and its properties which would be binding till the necessary change is effected by appropriate proceedings under Section 22 of the Bombay Public Trust Act. It was also contended that the Brethren Church is no longer in existence since it has merged into CNI and therefore, all the properties have become the properties of the CNI and that the trustees of the CNI are virtually trustees of the Brethren Church. It was held by this Court that the said questions were exclusively within the competence of the Charity Commissioner and can be decided by the Charity Commissioner alone. It was further held that in that case the Charity Commissioner can decide the said question in the application already filed for changes under Section 22 of the said Act.

4.13 Learned advocate for the respondent has also relied upon the 9 Judge Bench judgment of the Apex Court in the case of Mafatlal Industries Ltd. vs. Union of India reported in 1997(89) E.L.T. 247 (Majority Judgment) particularly para 99 on page 327 which reads as under:

"The discussion in the judgment yields the following propositions. We may forewarn that these propositions are set out merely for the sake of convenient reference and are not supposed to be exhaustive. In case of any doubt or ambiguity in these propositions, reference must be had to the discussion and propositions in the body of the judgment.

(i) Where a refund of tax/duty is claimed on the ground that it has been collected from the petitioner/plaintiff - whether before the commencement of the Central Excise and Customs Law (Amendment) Act, 1991 or thereafter- by mis-interpreting or mis-applying the provisions of the Central Excises and Salt Act, 1944 read with Central Excise Tariff Act, 1985 or Customs Act, 1962 read with Customs Tariff Act or by mis-interpreting or mis-applying any of the rules, regulations or notifications issued under the said enactments, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactment before the authorities specified thereunder and within the period of limitation prescribed therein. No such is maintainable in that behalf. While the jurisdiction of the High Courts under Article 226 - and of this Court under Article 32 - cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and disposed of in the light of and in accordance with the provisions of Section 11B. This is for the reason that the power under

Article 226 has to be exercised to effectuate the rule of law and not for abrogating it."

4.14 On the basis of the aforesaid judgment, learned advocate for the respondent submitted that the reliefs claimed in the present suit were of the similar nature namely regarding existence of the trust and properties of the trust and therefore, the Civil Court had no jurisdiction to decide the said question.

4.15 Learned advocate further submitted that once it was found that the society was deemed to be a public trust under the provisions of the BPT Act and was in fact, registered under the BPT Act, its existence as a public trust and its properties which are registered under the provisions of the BPT Act would be governed by the proper entries made by the Charity Commissioner and unless they are changed, they will continue as such. It was further contended that looking to the plaint, there was no case of dissolution of Brethren Church as a society.

4.16 Learned advocate for the respondents has relied upon the Division Bench judgment of the Bombay High Court in the case of Taraben Baldevdas Parikh vs. The Charity Commissioner, Greater Bombay Region reported in 1955 Vol.57 BLR 1069 on page 1073 the Court observed as under:

".... The scheme of these provisions appears to be in the first instance to confer jurisdiction upon the Deputy or Assistant Charity Commissioner to hold an enquiry inter alia relating to the existence of a trust, whether such trust is a public trust, and whether any property is the property of such trust. The jurisdiction of the civil Courts to decide questions which have been either dealt with by him is excluded, save as expressly provided by the Act; and the decision of the Deputy or Assistant Charity Commissioner or the Charity Commissioner, subject to decision in appeal, is made final and conclusive. In short, the Legislature has provided a tribunal with exclusive jurisdiction to try the questions specified in sec.19; and has made provision for appeals against those decisions and has expressly excluded the jurisdiction of the civil Courts in matters which are entrusted to the jurisdiction of that tribunal.

"Now, jurisdiction of such amplitude having been

conferred under the Act upon the Deputy or Assistant Charity Commissioner or the Charity Commissioner to decide questions set out in s.19, and jurisdiction of the civil Courts having been simultaneously excluded, it would be difficult to hold that the civil Court has jurisdiction to decide the same questions over again in a civil suit. Reliance, however, was sought to be placed upon the terms of s.50 which enables suits relating to public trusts to be filed for certain reliefs by the Charity Commissioner or by two or more persons having an interest in the trust and having obtained the consent in writing of the Charity Commissioner. One of such suits is a suit where a declaration is necessary that particular property is property belonging to the public trust or where a direction is required to recover possession of such property or proceeds thereof or for taking accounts of such property from any person including a person holding adversely to the public trust, or where the direction of the Court is deemed necessary for the administration of the public trust."

4.17 The learned counsel for respondent has also relied upon the judgment of this Court in the case of Kuberbhai Shivdas and another vs. Mahant Purshottamdas Kalyandas and others reported in 1961(2) GLR 564 particularly on page 571 the Court has observed as under:

"Sec.79 shows that an application can be made to the District Court by any person and not merely by a trustee who is aggrieved by the decision of the Charity Commissioner under sec.70 or 70A of the Act. Sec.70 provides an appeal to the Charity Commissioner against an order passed under secs.22 and 22A, amongst other sections. Therefore, any person, not merely a trustee, can apply under sec.22A for a change in the entry on a matter or a particular left out from consideration in a previous inquiry under sec.19. If an order is passed under sec.22A, and an applicant is aggrieved, he has the right of appeal under sec.70. If he is dissatisfied by an order under sec.70, a right has been conferred upon him to apply under sec.72 to the District Court and thereafter in an appeal to the High Court. Such a right is confined to the two questions set out in sec.79(1). Therefore, there is a complete code provided in the Act for dealing with matters set out in secs.18 and 19

and recourse must be had to the procedure laid down in the Act. This is made clear by the provisions of sec.80 which bar the jurisdiction of a Civil Court in the two categories of matters, viz., (1) those questions left under the Act to be decided by the Assistant or the Deputy Charity Commissioner under secs.18 and 19, (2) those which the Act has made final and conclusive under sec.79(1) and sec.21(2). The plaintiffs having had recourse to sec.70 and not having followed up their remedy under sec.72 are abound by the decision of the Charity Commissioner in their appeal before him.

On the analysis of the several provisions of the Act and in the view that I take of those provisions, the learned Joint Judge had no jurisdiction to decide issues 3 and 4."

4.18 In view of the aforesaid decisions, learned advocate for the respondents stated that the entries regarding Brethren Church and its properties under the BPT Act are final and conclusive which can only be challenged by following the procedure prescribed under the said Act.

4.19 Learned counsel submitted that regarding res judicata and decision of Charity Commissioner and Civil Court in the present case the question arises as to the exclusion of jurisdiction of Civil Court when special and exclusive jurisdiction of a statutory authority is created by the State law namely Bombay Public Trusts Act. Section 9 of the Code of Civil Procedure also provides that unless jurisdiction is expressly or impliedly barred by any statute, Civil Court will have jurisdiction to decide the matters pertaining to civil rights.

4.19(A) It was further submitted that the jurisdiction is based on fundamental principle of `commity' of judicial decisions. The presumption is that the law never creates a situation where two conflicting decisions will create contradictory and anomalous situation for the parties to the litigation by deciding the same issue differently. The relief sought in the present suit is specifically on the basis that if the Church of Brethren has merged into CNI as alleged in the plaint, the Church of Brethren has ceased to exist. The question is that if the Church of Brethren is already registered after proper inquiry by the Assistant Charity Commissioner under the provisions of the Bombay Public Trusts Act, the existence or non-existence of such Trust can only be decided under the

provisions of the Bombay Public Trust Act, and under Section 80 of the said Act, jurisdiction of a Civil Court is excluded for that purpose. Reading the totality of the plaint, the plaintiffs want declaration regarding non-existence of the Church of Brethren which is already registered as a trust under the BPT Act.

4.19(B) Learned counsel further submitted that the contention of the other side that there is a deem public trust under the provisions of the Act, if a society is registered under the provisions of the Societies Registration Act and is for religious or charitable purpose. In fact, if any application is made under the provisions of the BPT Act for registration of a society already registered under the provisions of the SRA Act as a trust, the Assistant Charity Commissioner has to decide under Section 19 of the BPT ACt whether the trust exists and whether the society is for charitable and religious purpose or not. If it is found that the society is not having any religious or charitable purpose, the Assistant Charity Commissioner can refuse to register it as a trust. When application is made for registration of a society as a Trust, the members of the public and/or beneficiaries can also object to the same on the ground that the society in question is not actually for the religious or charitable purpose. It is, therefore, clear that after due inquiry under Sec.19 of the BPT Act, the Assistant Charity Commissioner has to decide the following things:

(a) Whether society is for religious and charitable purpose which becomes public trust within the meaning of the Bombay Public Trusts Act.

(b) Whether there is existing trust with duly appointed trustees or not and;

(c) What properties of the said trust are required to be registered in the register maintained by the Charity Commissioner.

4.19(C) In support of the aforesaid contention, the learned counsel has relied upon the judgment of the Maharashtra High Court in the case of Suresh Ramnivas Mantri Vs. Mohammed Ifterkaroddin reported in AIR 1999(2) Maharashtra Law Journal p.131. Learned counsel submitted that in the said judgment the Court has taken the view that there is no automatic registration of a society registered under the SRA Act, as a trust, under the provisions of the BPT Act. An inquiry whether it is for religious or charitable purpose or not, is required

to be made under the provisions of the BPT ACt and unless on such inquiry, registration as a trust is made and certificate of registration is issued under Rule 8 of the BPT Rules, it does not automatically become a trust. It, therefore, follows that once after the due inquiry a trust is registered under the BPT Act read with BPT Rules, all questions regarding its existence and properties can only be decided under the provisions of the said Act by the Assistant Charity/Deputy Charity Commissioner and Civil Court's jurisdiction is barred under Section 80 of the said Act, as far as the said questions are concerned. In the present suit, specific question regarding existence of the Church of Brethren which is a registered trust is raised. The second question regarding its properties is also governed by the provisions of the said Act.

Regarding Repugnancy of SR & BPT Act:

4.19(D) Regarding repugnancy between SR Act and BPT Act, learned counsel submitted that the State has received the assent of the President on 31.5.1950 and the same was published in Gazette on 14.8.1950 and was made applicable on 21.1.1952 in Bombay State. The same was made applicable by the Gujarat Government in the whole State of Gujarat on 1.8.1961 and the same was published in Government Gazette part IV B dated 3.8.61.

4.19(E) Learned counsel for the respondent has further submitted that the issue regarding repugnancy between the Central and the State laws is misconceived on facts and law in the present case. The question of repugnancy would arise only when the provisions are covering the same field. Subject of `registration of society' does not fall under the List II or List III of Schedule VII of the Constitution of India and, therefore, it falls under the Entry 97 of the List I of Schedule VII of the Constitution. The SRA Act is, therefore, enacted by the Parliament under Entry 97 of List I of Schedule VII of the Constitution of India. As far as the BPT ACt is concerned, it is covered by Entry No.10 of List III of Schedule VII (concurrent List) of the Constitution of India. The SRA Act and the BPT Act do not cover the same subject or the field and, therefore, there is no question of repugnancy as far as their provisions are concerned. The question of repugnancy arises where Central and State laws occupy the same field and cannot stand together. In any case, as stated hereinabove, once the facts of the present case fall under Article 254(2) of the Constitution of India, the question of repugnancy of provisions under Article 254(1) of the Constitution will not arise and the State law will prevail. It is,

therefore, clear that even assuming that there is any conflict between the provisions of the SRA Act and in particular Section 13 thereof and the BPT Act and in particular Secs.19, 79 and 80 thereof, there is no question of repugnancy inasmuch as the State law will prevail and jurisdiction of a Civil Court will be barred under Sec.80 of the BPT Act.

4.19(F) Thereafter learned counsel for the respondent submitted that case reported in AIR 2002 SC 3404 Kaiser-Hind Mill case (supra) squarely covers the point that if the Parliament has enacted a law and if subsequent State law conflicts with Central law and the State law has received assent of President, the State law will prevail over the Central law in case of any conflict between the provisions of the said laws. The present case falls under Article 254(2) of the Constitution of India inasmuch as subsequent State law namely Bombay Public Trusts Act which has received assent of the President would prevail in the State of Gujarat over any central legislation which has provided any conflicting provision regarding jurisdiction of the Civil Court. Therefore, assuming without admitting, that there is conflict between Sec.13 of the SRA ACt and the provisions of the BPT Act, the provisions of the BPT Act will prevail in the State of Gujarat, and, therefore, the Civil Court's jurisdiction will be ousted regarding any question to be decided under the provisions of the BPT Act, pertaining to any registered trust and the provisions of Sec.13 of the SRA Act will have no application.

4.19(G) It was further submitted that if a case falls under Article 254(2) of the Constitution of India, then the question of applicability of provisions of Article 254(1) of the Constitution does not arise. Clause (1) of Article 254 of the Constitution is made subject to the provisions of Clause (2). Therefore, in the present case, Clause(2) of Article 254 of the Constitution covers the field and the question of repugnancy of the provisions does not arise under Article 254(1) of the Constitution of India. As per the settled legal position, if Central law and the State law deal with separate and distinct matters, though of cognate and like character; or their purposes are different, the question of repugnancy does not arise. (Re. Ch.Tika Ramji and others etc. Vs. The State of Uttar Pradesh and others reported in AIR 1956 SC 676).

4.19(H) Learned counsel for the respondent has further submitted that it is consistently held by the Hon'ble

Supreme Court that if two Acts operate in different fields, the question of repugnancy does not arise. In the Gujarat State, BPT Act would prevail over any provisions which may be repugnant or conflicting under the SRA Act.

4.20 As regards Sec.26 of the BPT Act and the contention raised by the appellants, it was contended on behalf of the respondents that it is clear that in the first place it must be the decision of the competent court. If under Section 13, any order is made regarding society by the District Court, which is a competent court, then only question would arise. Section 26 clearly says that any question, decision of which is barred under the BPT Act, only such question decided by any court or authority is to be registered by making change in the entry by the Charity Commissioner. In the present case, as stated hereinabove if the suit is barred under Section 79 read with Section 80 of the BPT Act, the question regarding any decision made by the competent court does not arise in the present case.

4.20(A) Learned counsel for the respondent submitted that in any case in this case the plaintiff is a registered trust under the provisions of the BPT Act and in view of the same following proceedings are pending before the Charity Commissioner.

(1) Diocese Council of CNI registered as No.D/17 of Ahmedabad with Charity Commissioner on 12.5.80 w.e.f. 1971 showing in schedule, names of congregations of Ex-First District Church of Brethren. Application for change report No.665/81 filed before Dy.Charity Commissioner Ahmedabad on 15.1.81 for transfer of properties of First District Church of Brethren (Regd. as No.EG 643 Bharuch).

(2) Application on 15.1.81 by Chairman of Property Board of Trust of First District Church of Brethren for change report to transfer properties of Brethren Church to Diocese. Application No.44/81 to Assistant Charity Commissioner, Bharuch.

(3) The Charity Commissioner has passed an order dated 23.5.84 that two applications be transferred to Deputy Charity Commissioner, Ahmedabad to be heard together.

(4) On 23.9.02 affidavit filed by Bishop Gujarat

of Diocese.

4.20(B) In view of the aforesaid following position emerged that:

(1) since 29.11.70 CNI in possession of properties of Brethren Church.

(2) Management by Diocese of these properties.

(3) Taxes paid by Diocese.

(4) Repair and maintenance by Diocese.

(5) Pastors /Priests had paid arrears by Diocese.

4.20(C) In all these aspects, civil court may not have jurisdiction to deal with all these aspects which has been initiated because the plaintiff was a public trust.

4.20(D) It was submitted that looking to the provisions of Sec.13, even if the suit is considered as a suit for dissolution of the society registered under the SR Act, by virtue of the provisions of Sec.13, an application is required to be made pertaining to any dispute between the members upon dissolution of the society to the principal court of original civil jurisdiction of the District in which chief building of the society is situated and the court shall make order accordingly. That the "proper court of original civil jurisdiction of District" is defined under Sec.7 of the Bombay Civil Courts Act as the District Court. Therefore, the present suit which was preferred in the court of Civil Judge (S.D.), Bharuch, was even otherwise not maintainable and if there was any dispute regarding the dissolution of the society, it is to be referred to the District Court where the chief building of the society is situated. In fact, the only question raised in the second appeal was whether the society registered under the provisions of the SR Act would stand dissolved on complying with the formalities as mentioned in Section 13 of the SR Act. Therefore, if any dispute regarding such dissolution arises between the members of the society namely the present plaintiffs and the defendants, who claim to be original members of the Brethren Church, it is to be referred to the District Court and the suit filed in the Civil Court will not be maintainable.

4.21 Learned advocate for the respondents submitted that in view of the fact that the court had no jurisdiction to decide the question and that the suit of

the nature filed by the present plaintiff was not maintainable, the question of right to sue did not arise.

Contention of Mr.Arun Oza, learned Government Pleader on behalf of Charity Commissioner :

5. Mr.Arun D.Oza, learned Government Pleader has appeared on behalf of the Charity Commissioner. He has invited my attention to the certain paragraphs of the judgment of the learned Appellate Judge and also the reliefs claimed by the original plaintiff in the plaint. After referring to the said, learned advocate for the Charity Commissioner has stated that the substantial issue before the learned Civil Judge was as to whether the Brethren Church which was registered as a trust has ceased to exist or not and has dissolved or not. According to him, the learned appellate Judge has rightly decided that as per the provisions of section 19(1) of the Act, the question whether a trust exists or not is to be decided by the Deputy or Assistant Charity Commissioner only. There is no dispute about the fact that no further entry has been made in the register of the trust and the name of the original trust remains in the record of the Assistant Charity Commissioner. It has been further submitted that appeal has been provided under Section 70(1) of the Act against the order passed under section 20 of the Act. It has been provided in section 79(1) of the Act that any question, whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, shall be decided by the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal as provided in the Act. Moreover, finality has been given to such decision by the provisions of Sec.79(2) of the Act. Sec.80 of the Act provides that no civil court shall have jurisdiction to decide or deal with any question which is by or under the Act to be decided or dealt with by any officer or authority under the Act, or in respect of which a decision or order of such officer or authorities has been made final and conclusive.

5.1 In view of the aforesaid provisions of the Act, learned advocate for the Charity Commissioner submitted that the jurisdiction of the Civil Court in deciding the issue substantially involved in the suit has been expressly barred by the above provisions of the Act. He has supported the reasonings of the learned appellate Judge in this behalf.

5.2 Learned advocate for the Charity Commissioner has further submitted that it is a settled principle of law

that the exclusion of jurisdiction of Civil Courts is not to be readily inferred and such exclusion must either be explicitly expressed or clearly implied. In the present case it is clear that the jurisdiction has been expressly barred as stated above. It has also been observed in many cases that exclusion of jurisdiction of Civil Courts can be brought about by setting up courts of limited jurisdiction in respect of the limited field, only if the vesting and the exercise of that limited jurisdiction is clear and operative and there is an adequate machinery for the exercise of the limited jurisdiction.

5.3 He further submitted that where there is a liability existing at common law and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy existing in common law, there, if the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has no right of election to pursue either of the two remedies. As stated above, the jurisdiction of the Civil Court is barred under Section 80 of the Act and complete remedy has been prescribed under Sections 19, 20, 22 and other sections of the Act. Appeal has also been provided against the order of the Assistant Charity Commissioner passed under Sec.22 of the Act, before the Charity Commissioner under the sec.70(1) of the Act. Sec.70-A also provides for a suo-moto revision by the Charity Commissioner. In view of the aforesaid circumstances, the Civil Court jurisdiction is completely barred.

5.4 In support of the aforesaid contention, he has relied upon the Division Bench judgment of this Court in the case of Charity Commissioner, Ahmedabad vs. State of Bombay (now the State of Gujarat) and others reported in 1993(1) GLH 94. The Division Bench of this Court (Coram: S.H.Sheth and P.D.Desai, JJ.) in para 64 on page 129 has observed as under:

> "It may be useful at this stage to refer to Section 80. The said Section creates a bar of jurisdiction and provides that save as expressly in the Act, no Civil Court shall have jurisdiction to decide to deal with any question which is by or under the Act to be decided or dealt with by any officer or authority under the Act, or in respect of which the decision or order of such officer or authority has been made final or conclusive. This section bars the jurisdiction of a Civil Court in respect of two categories of questions, namely, questions which

by or under the Act are to be decided by any officer or authority under the Act and question in respect of which the decision or order of such officer or authority has been made final and conclusive under the Act."

5.5 The learned Government Pleader has also relied upon another judgment in the case of Trustees of Jam Jodhpur Sthanakvasi Vardhman Vanik Jain Sangh & Ors. vs. Trambaklal Jivaram & Ors. reported in 1987(1) GLR 550 particularly para 9 on page 553 the Court has observed as under:

"This Court in the case of Kuberbhai Shivdas vs. Mahant Purshottamdas Kalyandas, 2 GLR 564, and in the case of Ishwarlal Nanalal v. Ghanchi Chimanlal R., 1963 (4) ILR Gujarat 767, after considering the provisions of the Trusts Act held that the decisions given under the Act have the effect of a judgment in rem by virtue of secs.50, 70 to 72 and 79 and 80 of the Act, that the jurisdiction of the Civil Court to decide whether properties belong to the public trust or not is barred; that decision given by the Charity Commissioner is final and conclusive subject to the decision of the appellate or revision authority and is binding to the Civil Court. The said decisions have been followed in the case of Sherasiya Saji Alavadi Momin v. State of Gujarat, 1985 GLH 597 : (26(1) GLR 513)."

6. Mr.Kaji, learned counsel on behalf of the appellants in reply to the aforesaid contention has made following submissions:

6.1 As regards the Division Bench judgement in the case of SULOCHANA KANAIYALAL DESAI VS. THE CHARITY COMMISSIONER, GUJARAT STATE (supra), the learned counsel submitted that the words under Section 50A of the BPT Act in respect of society which had become public trust, the contentions challenging the scheme framed by the Charity Commissioner were the following:

(1) That the Charity Commissioner has no jurisdiction to interfere with the constitution of the trust registered under the Societies Registration Act, 1860;

(2) Under Section 50A of the Act, the Charity Commissioner has no power to remove the original

trustees who were to be trustees for life according to the original trust deed;

(3) The Charity Commissioner has no power to reduce the term of office of the trustees;

and

(4) The provisions in the scheme as to the election of the trustees are not according to law.

6.2 There is no discussion in the order with regard to point No. (1). Dealing with the point No. (2) raising the issue as to the power of the Charity Commissioner to remove the original trustees who were appointed for life, the Court pointed out in pages 4 and 5 of the judgement that the Society was also a deemed public trust and quoted Section 2(13) of the BPT Act which has been quoted earlier. He therefore submitted that the court dealt with the issue relating to framing of the Scheme under Section 50A and upheld the right of the Charity Commissioner to frame the Scheme. He therefore submitted that the court has not decided anything about issue No. 1. Further it is not the case of the appellant in the above appeal that the BPT Act has no application or that the Charity Commissioner has no jurisdiction to interfere with the constitution of the deemed trust registered as a Society under the S.R. Act. The contention raised is only that the dissolution of the Society can only take place as provided by Section 13 of the S.R. Act. In case of any dispute about its dissolution it can only be resolved by the Civil Court. The Charity Commissioner under the BPT Act would have no jurisdiction to adjudicate on the dissolution of the Society. Once the Society is validly dissolved no further inquiry or investigation can be carried on or is required to be done under the BPT Act because the Society has been validly dissolved with the seal of approval put on it by the Civil Court with jurisdiction. In other words, the decision of the Civil Court about dissolution of the Society operates as res-judicata in the broader sense of the term. It is, therefore, submitted that the decision of the Division Bench does not touch the issue at all and this Court is not barred going into the same on the ground that the Division Bench judgement is binding on it.

6.3 As regards the decision in the case of JAM JODHPUR STHANAKVASHI JAIN SANGH VS. TRAMBAKLAL (1987) 28(1) GLR 550, the learned counsel submitted that unless the judgement on particular issue is pronounced by a

Court which has jurisdiction, it would not operate as res-judicata. If by provisions of the BPT Act, the jurisdiction of Civil Court is barred wherein matters are required to be decided by the Assistant or Deputy Charity Commissioner or the Charity Commissioner, if the Civil Court has decided the issues as to whether a trust exists or not and who are the trustees thereof, the court acts beyond its powers and the judgement will not operate as res-judicata.

6.4 It is submitted that the question of res-judicata does not arise on the facts of the present case. Further the propositions laid down in the above case are unexceptionable. It is obvious that a decision of a Civil Court without jurisdiction either territorial or subjectwise cannot operate as res-judicata.

6.5 However, the judgement has no relevance to the point involved in the present case which is whether the Civil Court has jurisdiction to decide whether the Society is validly dissolved or not and would its jurisdiction be barred merely because the Society has become a deemed public trust under the BPT Act? This case does not involve the issue involved in the present case, namely, the bar of jurisdiction of the Civil Court regarding dissolution of the Society which is a deemed public trust under Section 2(13) of the BPT Act. The judgement above referred to, therefore, does not render any help in deciding the issues raised in this case.

6.6 As regards the decision in the case of Charity Commissioner Vs. State of Bombay reported in 1993(1) GLH 94, it has been submitted that once again the proposition laid down therein is unexceptionable. The Civil Court would have no jurisdiction to decide any question required to be decided by the Charity Commissioner under the BPT Act. This decision does not deal with the case of a Society which is dissolved under the provisions of the SR Act. As submitted in the earlier submissions, there are no two separate entities, one being a Society under the S.R. Act and the other being a public trust under BPT Act. Society itself becomes a deemed public trust under Section 2(13) of the BPT Act. The provisions of the SR Act dealing with the dissolution of the Society are neither abrogated nor superseded by the BPT Act. The Society has to be dissolved only under the provisions of Section 13 of the S.R. Act subject to any dispute relating thereto being resolved by a Civil Court. The ceasing to exist of a public trust is automatic or consequential on the Society being validly dissolved and there is no question of the issue to be decided afresh by

any authority under the BPT Act about existence or otherwise of the deemed public trust in respect of a Society already dissolved.

6.7 So far as the judgement in the case of KUBERBHAI SHIVDAS VS.MAHANT PARSHOTTAMDAS reported in (1961) 2 GLR 564 is concerned, the question was regarding the bar of Civil Court to entertain any dispute regarding issues required to be decided by authorities under the BPT Act after holding inquiry under Sections 20 to 22A of the BPT Act and the Court upheld the contention that the Civil Court's jurisdiction was barred. This case also did not involve any issue regarding the jurisdiction of the Civil Court to decide as to the dissolution of the Society under the S.R. Act which had also become a deemed public trust under Section 2(13) of the BPT Act.

6.8 As regards unreported judgments cited by the respondents at the hearing of the appeal do not run counter to the submissions made above. Referring to the judgment of Justice B.K.Mehta in Appeal From Order No.238/82 it was submitted that there is no reference to the fact that the trust involved was a society under the SR Act. The Court has only found that it is not the proper case for appointment of Receiver and in that context it has observed that the entry in the register under the BPT Act would be binding until necessary change is effected by appropriate proceedings under sec.22 of the BPT Act. It is submitted now that the BPT Act will not apply in case of conflict between the two Acts i.e. SR Act and BPT Act and that the question whether the Receiver should be appointed or not is a matter depending on each case and the Court has nowhere mentioned that the suit is not maintainable.

6.9 In view of the above position, it was submitted that the appeal be allowed and the decision of the lower appellate court that the suit is not maintainable be reversed and be held that the suit was maintainable and the reliefs claimed do not fall within the scope of inquiry by the Charity Commissioner under secs.19, 21 or 79 of the BPT Act.

CONCLUSION :
Civil Court Jurisdiction:

7. There is a strong presumption that Civil Courts have jurisdiction to decide all questions of civil nature. The exclusion of jurisdiction of Civil Courts is therefore not to be readily inferred and such exclusion must either be "explicitly expressed or clearly implied."

7.1 There are three classes of cases in which a liability might be established, founded upon statute. One is where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue wither that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it - The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class.

[Interpretation of Statute by Justice G.P.Singh, Seventh Edition, page 531 to 532.]

7.2 Exclusion of jurisdiction of civil court: Principles:

"From the above discussion, it becomes clear that the jurisdiction of civil courts is all embracing except to the extent it is excluded by an express provision of law or by clear intendment arising from such law. It is settled law that the exclusion of the jurisdiction of civil courts is not to be readily inferred. In cases where the exclusion of civil courts jurisdiction is expressly provided, the considerations as to the scheme of the statute in question and the adequacy or the sufficiency of the remedies provided for by it may be relevant but cannot be decisive. But where exclusion is pleaded as a matter of necessary implication, such consideration would be very important and in conceivable circumstances, might even become decisive. It is also well-settled that even where jurisdiction of civil courts is excluded, they have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure:

[Re. Code of Civil Procedure by C.K.Thakker Vol.1 page 88]

7.2(A) (1) where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not."

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

[Re. Dhulabhai etc. Vs. State of Madhya Pradesh reported in AIR 1969 SC 78.]

7.3 Principles regarding jurisdiction of civil courts:

"(1) Where the dispute arises from general law of contract, i.e. where reliefs are claimed on the

basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 - which can be called `sister enactments' to Industrial Disputes Act - and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an Industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open."

[Re. The Rajasthan State Road Transport Corporation and another etc. Vs. Krishna Kant etc. reported in AIR 1995 SC 1715]

Interpretation of Bombay Public Trusts Act:

7.4 I have considered the provisions of the Act particularly the preamble of the act, the definition of the Act, sec.2(13) of the Act. It may be noted that definition of "public trust" starts with means an express or constructive trust for either a public, religious or charitable purpose or both and includes a temple, a math, a wakf, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable or for both and registered under the Societies Registration Act, 1860. When the word "means" restricts the meaning of the words "public trust" to express or constructive trust for either public, religious or charitable, purpose. When the word "includes" used it is held that the definition was to make more extensive.

Here the definition is in form of means in first part and includes in second part and the same definition of public trust can be considered inclusive definition and therefore the society which is registered under the provisions of the Act is considered as pubic trust in this behalf. Once the society is again registered under the provisions of the BPT Act, the same will have a separate entity under public trust under the provisions of the BPT Act and the Charity Commissioner will have all powers to deal with the said entity namely registered as public trust under the provisions of the BPT Act. The definition is exhaustive and inclusive definition and it has to be given meaning in this behalf.

7.5 Section 8 of the Act which provides registration of the act under which the present trust is registered. Sec.19 of the Act which provides inquiry for registration which has been completed in this act and trust is registered.

7.5(A) As per sec.19 of the Act the Deputy or Assistant Charity Commissioner shall make an inquiry on the following some of the issues namely:-

(1) whether a trust exists and whether such trust is a public trust.

(2) what are the particulars of documents creating the trust?

(3) what are the particulars other than documents about the creation or origin of trust?

7.5(B) These are some of the questions which the Charity Commissioner under sec.19 of the Act can decide for which the jurisdiction of the Civil Court is excluded.

7.5(C) Section 21 of the Act which provides entries in the register and Sec.22 provides change in the said registration. I have also considered Sec.26 of the Act which provides Court to forward copy of decision to Charity Commissioner. Sec.79 of the Act provides decision of property as public trust property. The said section provides any question, whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, shall be decided by the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal as provided by this Act. The decision of the Deputy or Assistant Charity Commissioner or the Charity Commissioner has been made

final under the said Act. If this Court go through paragraphs of the plaint and the prayer of the plaintiff i.e. whether the trust is exists or not is a prayer which has been made by the plaintiff in this behalf. The said relief clearly covered by provisions of Sec.79 of the Act and sec.79(2) of the Act. From the provisions of Section 79, it is clear that the question whether a particular property is the property of the trust is required to be decided by the Charity Commissioner or his Assistants. The words used are "shall be decided by" and the provision contained in Section 79 is, therefore, clearly mandatory. Now, if under the mandatory provision of Section 79 the question whether a particular property is a trust property is required to be decided by the Charity Commissioner or his Assistants. Sec.80 of the Act provides Bar of jurisdiction. It provides that no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act, or in respect of which the decision or order of such officer or authority has been made final and conclusive. Sec.80 would clearly preclude the civil court from deciding that question. A special machinery is provided for determining the questions provided under Section 19 read with Section 79 of the Act. The Deputy or Assistant Charity Commissioner shall make an inquiry of some of the statutory issues which is provided under Sec.19 of the Act.

7.6 In view of the conjoint reading of Sections 79 and 80 of the Act is that if a particular question is under Sec.79 to be decided by the Charity Commissioner or his Assistant or by the Courts in appeal, the jurisdiction of a Civil Court to decide that question is expressly ousted by Sec.80.

7.7 For deciding whether sec.80 is attracted in a given case, one must consider what in substance and not merely in form, is the nature of the claim made in the suit and real relief sought therein. If, in order to afford that relief, it is necessary for the court to decide or deal with a question, which by or under the Act is to be decided or dealt with by an officer or authority appointed under the Act, then the Civil Court's jurisdiction in that respect is ousted.

Facts of present case:

7.8 The plaintiff has raised question in the plaint and asked for declaration that the the former First District Church of Brethren has ceased to exist and

further prayed that please be declared that the Church of North India is the legal continuation and successor of the First District Church of Brethren together with the right, title, claim, interest in or over its properties and the constitution, decisions and resolution of the Church of North India, its Synod and Gujarat Diocesan Council are binding on all the Pastorates in Gujarat which were functioning as local churches or congregations under the First District Church of Brethren. In this case it may be noted that the plaintiff trust is originally registered under the SR Act but thereafter Memorandum of Association also provides for dissolution of the society. However, it may be noted that after that the plaintiff has registered under the provisions of Sec.2(13) of the BPT Act and thereafter it has been known in the eye of law as a public trust registered under the provisions of the BPT Act. Once it is a public trust, right, title, interest, declaration and prayer which he wants to claim are the rights created under the BPT Act and the reliefs therefore provided under the BPT Act will have to be given under the provisions of the BPT Act. In this case rights which has been created has normally flow from Sec.19 of the BPT Act read with Sec.79 of the BPT Act. Once that is so, the bar created under sec.80 will normally attract and the declaration will clearly fall within the purview of sec.79 of the Act and, therefore, the relief which has been prayed by the plaintiff which can be granted by the Charity Commissioner under the provisions of the BPT Act and therefore the civil court have no jurisdiction to decide the same. In fact, there is a direct judgment of Division Bench of this Court in First Appeal No.116 of 1966 decided on 27.11.1972 particularly the observations of the Division Bench of this Court in this behalf.

7.9 I have considered the submissions of learned counsel for the appellant as well as of the respondent and also considered the principles regarding exclusion of civil court jurisdiction, Code of Civil Procedure by C.K.Thakker, Interpretation of Statute by Justice G.P.Singh, Dhulabhai's case, Rajasthan State Road Transport Corporation's case and also Mafatlal case. I have also considered the Division Bench judgment in Sulochana Kanaiyalal Desai's case, another Unreported Judgment of B.K.Mehta, J in case of First District Church of Brethren, which has been cited by the learned counsel for the respondent in this case. In all these authorities the law laid down is that if right is created under the Act then remedy is also to be persuaded under the act and there is no independent remedy under the civil law when that remedy is barred by the expressed

provisions contained in this act, the civil suit for that remedy created under that act is barred. In view of the same, the civil suit filed by the plaintiff is not maintainable at law and the same is barred by Secs.79 and 80 of the BPT Act. It is true that originally the appellant plaintiff was registered under the provisions of the SR Act, however, after that it has again been registered as public trust under the BPT Act. It is true that when the society is registered and dissolved the entity may not exist. However whether the public trust are comprises of original society or whether the trust exists or not the Charity Commissioner will have to examine that formerly the entity was there under the SR Act and the same was dissolved and in view of the same the trust also do not exists under the BPT Act. However, in this case, the scope of enquiry may be limited but nonetheless the Charity Commissioner will have jurisdiction and will have to decide as to whether the trust existed or not under the scheme of BPT Act. The said limited jurisdiction will have to be exercised by the Charity Commissioner. It cannot be automatically dissolution of the public trust under the BPT Act. To that extent the Charity Commissioner has a jurisdiction in this behalf.

7.9(A) In my view, suppose in a given case if the society is dissolved and if that is disputed then the Charity Commissioner will have to decide as to whether the dispute raised by other group whether dissolution is valid or invalid. If the dispute raised by the other side is invalid, naturally the society will be dissolved and ultimately the trust will be dissolved, that will have to be adjudicated by the Charity Commissioner. But in a case if the contention of the other side that the society is not validly dissolved in that case the Charity Commissioner will have to adjudicate as to whether the dissolution of the society is legal or not. If it is not legal then still the trust exists under the BPT Act. In view of the same, the Charity Commissioner under the BPT Act has jurisdiction in this behalf.

7.9(B) All these judgments I have referred and quoted comes to the conclusion that if there is a right which is created or exist under the Act then for that purpose whatever the remedies which is provided under the Act will have to be considered and no other remedy or general law remedy in this behalf. In this case whether the trust exists or not will have to be decided by the Charity Commissioner because the creation of the trust is a statutory thing which is provided under the BPT Act.

Regarding repugnancy of SR Act and BPT Act:

7.10 As regards the conflict between the Bombay Public Trust Act and the Societies Registration Act, it may be noted that the Societies Registration Act was of 1860. The said act is enacted under the residuary power Entry 97 of the Constitution of India under List I of 7th Schedule of the Constitution of India. The SR Act is enacted by the Parliament under Entry 97 of List I of the Constitution of India. As far as Bombay Public Trusts Act is concerned, it is covered by Entry 10 of List III (concurrent List of Schedule VII of the Constitution of India).

7.11 Legally as far as BPT Act is concerned, the President has given assent on 31.5.1950 and the same was published in Gazette on 14.8.1950 and was made applicable in Bombay State on 21.1.1952. The said act was made applicable to the Gujarat State in whole area of the State on 1.8.1961 and the same was published in Government Gazette Part IV B dated 3.8.1961.

7.11(A) Repugnancy between two pieces of legislation, generally speaking, means that conflicting results are produced when both the laws are applied to the same facts. Repugnancy arises when the provisions of the two laws are fully inconsistent and are absolutely irreconcilable, and that it is impossible to obey one without disobeying the other, e.g. when one statute says 'do' while the other says 'don't' in the same set of facts. (Re: Deep Chand Vs. State of Uttar Pradesh, AIR 1959 SC 648). The SR Act and BPT Act do not cover the same subject or the field and there is no question of repugnancy as far as their provisions are concerned.

7.11(B) I have already referred Article 254(2) of the Constitution of India. The present case falls under Article 254(2) of the Constitution of India and the question of repugnancy of the provisions of Article 254(1) will not arise and the State law will prevail, I rely upon the judgment of Kaiser-I-Hind's case in this behalf. In this case the State law has received the assent of the President and therefore the State law will prevail over the Central law. In this case there is no repugnancy inasmuch as State law will prevail and the jurisdiction of the civil court will be barred under Sec.80 of the BPT Act.

7.11(C) As regards the societies which were already registered under the SR Act, automatically became public trusts under the provisions of the BPT Act. Under the

circumstances, by virtue of the deeming fiction created by the statute, all societies which were formed for religious or charitable purpose and were already registered under the SR Act became public trusts as far as the Bombay Region was concerned. Under the circumstances, they were required to be registered under the provisions of the said Act and the exclusive jurisdiction of the Charity Commissioner, Deputy Charity Commissioner and Assistant Charity Commissioner, as the case may be, applied to the trusts, its existence, appointment etc. of trustees and its properties under the provisions of the BPT Act. The said provisions are not contrary to or in contradiction with any provisions of the SR Act. The societies which were earlier registered become public trust under Sec.2(13) of the BPT Act and therefore all the provisions of the BPT Act will apply to such society which has now been registered under the provisions of the BPT Act.

Answer to the questions:

7.12 In para 2.14 of my judgment, I have quoted four questions of law which was formulated by learned advocate while pressing this appeal. However, when the appeal was admitted on 19th January, 1987, only one question of law was formulated which is in para 2.15 of this judgment. As regards this second appeal, I am of the view that all these four questions covered the scope of second appeal and, therefore, I answer these four questions as under:

7.13 As regards question No.1, it is true that the society is registered under SR Act would stand dissolve on completing the formalities mentioned in the SR Act. However, as indicated above, the said society is registered under the provisions of BPT Act. So when no other action will have to be taken, the same will have to be taken by the Charity Commissioner in this behalf. For answering this question, I am relying on an Unreported Division Bench judgment of this Court in case of Sulochana K.Desai (supra) First Appeal No.116 of 1996 decided on 27.11.1972 which I have referred in para 4.8 of my judgment.

7.14 As regards question No.2, it is no doubt true that the Civil Courts have a jurisdiction to entertain and try the suit for declaration that the society registered under the SR Act has been dissolved. However when a society which is registered as public trust, whether trust did not exist in view of the dissolution of the society, the said decision will have to be arrived at by the Charity Commissioner in view of the provisions of the BPT Act.

7.15 It may however be noted that when the society was deemed to be a public trust under the provisions of the BPT Act and was in fact registered under the BPT Act, its existence as a public trust and its properties which are registered under the provisions of the BPT Act would be governed by the proper entries made by the Charity Commissioner and unless they are changed, they will continue as such.

7.16 As regards third question, in my view there is no real or apparent conflict between the SR Act and BPT Act in relation to the formalities of the dissolution of the society (which is also a public trust and with regard to the form which can decide the question). In fact the dissolution of the society is independently governed by Sec.13 of the SR Act and the change of entry in the register of the public trust are independently governed by the BPT Act. The SR Act was of 1860 and society was already registered under the said Act, automatically became public trust under the provisions of the BPT Act, 1950. Under the circumstances, by virtue of the deeming fiction created by the statute, all societies which were formed for religious or charitable purpose and were already registered under the SR Act became public trusts as far as the Bombay Region was concerned. Under the circumstances, they were required to be registered under the provisions of the said Act and the exclusive jurisdiction of the Charity Commissioner, Deputy Charity Commissioner and Assistant Charity Commissioner, as the case may be, applied to the trusts, its existence, appointment etc. of trustees and its properties under the provisions of the BPT Act. The said provisions are not contrary to or in contradiction with any provisions of the SR Act. On the contrary, the societies which were earlier registered become public trust under sec.2(13) of the BPT Act and, therefore, all the provisions of the BPT Act will apply to such society which has now been registered under the provisions of the BPT Act.

7.17 As regards question No.4, in view of the provisions of the BPT Act, the plaintiff has no right to sue in this behalf.

7.18 As regards the question which has been formulated by this Court on 19th January, 1987, this Court is of the view that after complying with the formalities as mentioned in Sec.13 of the SR Act, the provisions of BPT Act will be required to be complied with to decide whether the society which is dissolved exists as a trust under the BPT Act.

8. In view of the same, the Second Appeal is dismissed with no order as to costs. I confirm the judgment and decree dated 11th August, 1986, passed by the learned Extra Assistant Judge, Bharuch in Regular Civil Appeal No.72/84. In view of the same, the judgment and decree passed by the learned Civil Judge (S.D.), Bharuch, dated 31st March, 1984, in Regular Civil Suit No.72 of 1972 is quashed and set aside. Decree to be termed accordingly.

8.1 In this matter, Mr.K.H.Kaji, learned Senior Counsel has appeared on behalf of the appellant and Mrs.Ketty A.Mehta, learned Senior Counsel appeared on behalf of the respondents. Mr.Arun Oza, learned Government appeared on behalf of the Charity Commissioner. All the learned Counsels have very ably assisted this Court in resolving the disputed question of fact and law involved in this appeal. The Court is beholden to all the learned Counsels for the valuable assistance rendered to this Court.

8.2 Before I part with this judgment, I would like to observe as under.

A purely religious body is not, as such, a charity. For example, a nunnery. ..... If, however, they do good works of a charitable nature, such as nursing the sick or teaching the ignorant, they are charities even if their motive in doing those good works may be to further their own salvation.

[Re. Judgment of the Bombay High Court in the case of Fakirji Edulji Bharucha Vs. Bomanji Munchershaw Jhaveri reported in 1946(48) Bom.L.R. 323 on page 326]

"The value of a person is not measured by what he is, but by what he can be."

(Dr. Sarvapalli Radhakrishnan).

(K.M. Mehta, J.)

syed/